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 GIFFORD, KRASS, GROH, SPRINKLE, ANDERSON & CITKOWSKI, P.C.

From the
 INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY

PCT

NOTIFICATION OF TRANSMITTAL OF
 INTERNATIONAL PRELIMINARY
 EXAMINATION REPORT

(PCT Rule 71.1)

To:
 JOHN G. POSA
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Date of Mailing
 (day/month/year) **29 DEC 2004**

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|---|--|--|--|
| Applicant's or agent's file reference BAF-15252/29 | | IMPORTANT NOTIFICATION | |
| International application No. PCT/US03/28424 | International filing date (day/month/year) 10 September 2003 (10.09.2003) | Priority date (day/month/year) 10 September 2002 (10.09.2002) | |
| Applicant FERREE, BRET A. | | | |

1. The applicant is hereby notified that this International Preliminary Examining Authority transmits herewith the international preliminary examination report and its annexes, if any, established on the international application.
2. A copy of the report and its annexes, if any, is being transmitted to the International Bureau for communication to all the elected Offices.
3. Where required by any of the elected Offices, the International Bureau will prepare an English translation of the report (but not of any annexes) and will transmit such translation to those Offices.
4. **REMINDER**

The applicant must enter the national phase before each elected Office by performing certain acts (filing translations and paying national fees) within 30 months from the priority date (or later in some Offices)(Article 39(1))(see also the reminder sent by the International Bureau with Form PCT/IB/301).

Where a translation of the international application must be furnished to an elected Office, that translation must contain a translation of any annexes to the international preliminary examination report. It is the applicant's responsibility to prepare and furnish such translation directly to each elected Office concerned.

For further details on the applicable time limits and requirements of the elected Offices, see Volume II of the PCT Applicant's Guide.

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|---|---|
| Name and mailing address of the IPEA/US Mail Stop PCT, Attn: IPEA/US Commissioner for Patents P.O. Box 1450 Alexandria, Virginia 22313-1450 Facsimile No. (703) 305-3230 | Authorized officer <i>Sharon H. Greene for</i> Corrine McDermott Telephone No. (703) 308-0858 |
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INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)

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| Applicant's or agent's file reference BAF-15252/29 | | FOR FURTHER ACTION See Notification of Transmittal of International Preliminary Examination Report (Form PCT/IPEA/416) | |
| International application No. PCT/US03/28424 | International filing date (day/month/year) 10 September 2003 (10.09.2003) | Priority date (day/month/year) 10 September 2002 (10.09.2002) | |
| International Patent Classification (IPC) or national classification and IPC IPC(7): A61F 2/38 and US Cl.: 623/20.21 | | | |
| Applicant FERREE, BRET A. | | | |
| <p>1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of <u>3</u> sheets, including this cover sheet.</p> <p><input type="checkbox"/> This report is also accompanied by ANNEXES, i.e., sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).</p> <p>These annexes consist of a total of ___ sheets.</p> | | | |
| <p>3. This report contains indications relating to the following items:</p> <p>I <input checked="" type="checkbox"/> Basis of the report</p> <p>II <input type="checkbox"/> Priority</p> <p>III <input type="checkbox"/> Non-establishment of report with regard to novelty, inventive step and industrial applicability</p> <p>IV <input type="checkbox"/> Lack of unity of invention</p> <p>V <input checked="" type="checkbox"/> Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</p> <p>VI <input type="checkbox"/> Certain documents cited</p> <p>VII <input type="checkbox"/> Certain defects in the international application</p> <p>VIII <input type="checkbox"/> Certain observations on the international application</p> | | | |
| Date of submission of the demand 18 March 2004 (18.03.2004) | | Date of completion of this report 07 December 2004 (07.12.2004) | |
| Name and mailing address of the IPEA/US Mail Stop PCT, Attn: IPEA/US Commissioner for Patents P.O. Box 1450 Alexandria, Virginia 22313-1450 Facsimile No. (703) 305-3230 | | Authorized officer <i>Sharon H. Greene for</i> Corrine McDermott Telephone No. (703) 308-0858 | |

Basis of the report

With regard to the elements of the international application:*

☒ the international application as originally filed.☒ the description:

pages 1-20 as originally filed

pages NONE, filed with the demand

pages NONE, filed with the letter of _____.

☒ the claims:

pages 21-23 as originally filed

pages NONE, as amended (together with any statement) under Article 19

pages NONE, filed with the demand

pages NONE, filed with the letter of _____.

☒ the drawings:

pages 1-28 as originally filed

pages NONE, filed with the demand

pages NONE, filed with the letter of _____.

☐ the sequence listing part of the description:

pages NONE as originally filed

pages NONE, filed with the demand

pages NONE, filed with the letter of _____.

2. With regard to the language, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language _____ which is:

☐ the language of a translation furnished for the purposes of international search (under Rule 23.1(b)).☐ the language of publication of the international application (under Rule 48.3(b)).☐ the language of the translation furnished for the purposes of international preliminary examination (under Rules 55.2 and/or 55.3).

3. With regard to any nucleotide and/or amino acid sequence disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

☐ contained in the international application in printed form.☐ filed together with the international application in computer readable form.☐ furnished subsequently to this Authority in written form.☐ furnished subsequently to this Authority in computer readable form.☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. ☒ The amendments have resulted in the cancellation of:

☒ the description, pages none☒ the claims, Nos. none☒ the drawings, sheets/fig none

5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).**

* Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17).

** Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.

7. Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

. STATEMENT

| | | |
|-------------------------------|----------------------------------|-----|
| Novelty (N) | Claims <u>14, 19-21</u> | YES |
| | Claims <u>1-13, 15-18, 22-23</u> | NO |
| Inventive Step (IS) | Claims <u>14, 19-21</u> | YES |
| | Claims <u>1-13, 15-18, 22-23</u> | NO |
| Industrial Applicability (IA) | Claims <u>1-23</u> | YES |
| | Claims <u>NONE</u> | NO |

2. CITATIONS AND EXPLANATIONS

Claims 1, 4-5, 7-8, 15-16, 18, and 22-23 lack novelty under PCT Article 33(2) as being anticipated by Fox et al. Fox et al teaches a knee implant configured for placement between opposing bones comprising a fluid filled reservoir 10 filled with a load bearing gelatinous fluid 25; a body 50 capable of being coupled to at least one of said bones.

Claims 1-6, 9-13, 17-18, and 22-23 lack novelty under PCT Article 33(2) as being anticipated by Fabien et al. Fabien et al teaches a prosthetic implant configured for placement between opposing bones comprising a fluid filled reservoir 16; a body including elements 2 and 3 capable of being coupled to at least one of said bones.

Claims 1-5, 8-13, 15-18, and 22-23 lack novelty under PCT Article 33(2) as being anticipated by Shahrestani. Shahrestani teaches a hip implant configured for placement between opposing bones comprising a fluid filled reservoir 29; a body including elements 12 and 37 capable of being coupled to at least one of said bones.

Claims 1, 3-6, 9-13, 17-18 and 22-23 lack novelty under PCT Article 33(2) as being anticipated by Frey et al. Frey et al teaches a intervertebral prosthesis implant configured for placement between opposing bones comprising a fluid filled reservoir 8; a body including elements 4, 5, 12, 13 capable of being coupled to at least one of said bones.

Claims 14 and 19-21 meet the criteria set out in PCT Article 33(2)-(3), because the prior art does not teach or fairly suggest the combination of claim 1 and a wheel or rolling component, intervertebral disc cells, extracellular matrix, or a fluid permeable membrane.

----- NEW CITATIONS -----